

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

OP.No. 10178 of 2003(K)

PETITIONER:

RAMESH V.R. VATHERIPARAMBIL,
KUZHUPILLY P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.B.RAMACHANDRAN

RESPONDENTS:

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1. STATE OF KERALA, REP. BY SECRETARY,
(MOTOR TRANSPORT WORKERS WELFARE FUND APPELLATE
AUTHORITY) DEPARTMENT OF LABOUR REHABILITATION,
GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM.
 2. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
PALARIVATTOM, KOCHI-25
 3. THE DEPUTY TAHSILDAR (R.R) TALUK OFFICE,
KOCHI
 4. THE VILLAGE OFFICER, KUZHUPILLY VILLAGE,
KUZHUPILLY P.O.
 5. K.S.ASRAF, S/O. SAINUDEEN,
KAITHIRAPARAMBIL, KOTTUVALLY P.O.,
VALLUVALIL, NORTH PARUR.
 6. ANTAPPAN S/O. JOSEPH,
KURUPPASSERY, VALLUVALLI, NORTH PARUR.
 7. SEBASTIAN S/O. PAILO, AIWA VEETIL,
VALLUVALLI, N.PARUR.
 8. SUNIL; S/O. VAREGHESE, PULLIYATHURUTH
MANNATHURUTH, VARAPUZHA, N.PARUR.
 9. JOSEPH S/O. DEVASSY KALATHIL,
NANNIYATTUKUNNU, N.PARUR
 10. SASI S/O. MADHAVAN, PADAMATHARA,
AYYAMBILLY, KUZHUPILLY P.O., N.PARUR

11. PRAKASHAN S/O. KUZHIKONNAN, ORAKKAL,
 AYYAPPILLY P.O., N.PARUR.

12. TITUS S/O. JOSEPH, ARACKAL
 NAYARAMBALAM P.O., ERNAKULAM

13. THOMAS S/O. OUSO, NANNIPALLY,
 NAYARAMBALAM P.O., ERNAKULAM

14. GOPI S/O. ACHUTHAN, VARIKKASSERY,
 AYYAPPILLY P.O., ERNAKULAM.

R1 AND R2 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD
 R5 TO 7 & R10 TO R14 BY ADV. SRI.M.POLY MATHAI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
 ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
 FOLLOWING:

ORDER ON CMP NO. 17649 OF 2003 IN OP 10178 OF 2003

DISMISSED

8.2.2007

SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF CERTIFICATE SHOWING THE CHANGE OF OWNERSHIP OF THE BUS W.E.F. 30.12.1999 ISSUED BY THE INSURANCE COMPANY.

EXT.P2 TRUE COPY OF DEMAND NOTICE FOR 1998-99 DATED 13.9.2002 OF THE THIRD RESPONDENT.

EXT.P2(a) TRUE COPY OF DEMAND NOTICE DATED 13.9.2002 FOR THE YEAR 1999-2000

EXT.P2(b) TRUE COPY OF THE DEMAND NOTICE DATED 13.9.2002 FOR THE YEAR 2000-01

EXT.P3 TRUE COPY OF STAY ORDER DATED 1.1.2001 IN CMP NO. 62079 OF 2000 IN OP 36475 OF 2000

EXT.P4 TRUE COPY OF NOTICE DATED 29.1.2004

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR, J.

.....
O.P. No.10178 of 2003
.....

Dated this the 8th day of February, 2007.

JUDGMENT

The petitioner is challenging advance Motor Transport Workers Welfare Fund contribution demanded for nine workers treating the petitioner as employer and respondents 5 to 14 as employees. The demand is for the period 1999-2001. The claim of the petitioner that respondents 5 to 14 were his partners and they were jointly operating the vehicle is confirmed by counsel appearing for respondents 5 to 14. If respondents 5 to 14 were operating the vehicle along with the petitioner as joint owners, then there is no scope for demanding contribution from the petitioner as the business was admittedly run in partnership. Moreover, it is stated that respondents 5 to 14 are not regular Motor Transport Workers registered with the Board. In the circumstances, advance contribution demand is vacated as there is no scope for demand of contribution for partners who operated the vehicle along with the petitioner.

2. Counsel for the petitioner in fact sought permission from this court to amend the O.P. to cover demand for earlier periods i.e. from 1996 to 1999, final determination order for which period was passed on 30.10.1999.

Even though petitioner challenged the said demand in this court, this court did not consider the case on merits both in the Original Petition and the Writ Appeal, but the matter stands closed leaving freedom to the petitioner to challenge the order in appeal which was issued on 1.3.2004. Counsel has produced the said judgment in court which shows that Writ Appeal was dismissed for delay in filing the same. Counsel for respondents 5 to 14 for whom the demand is raised for the previous three years, confirmed that during those years also the petitioner and respondents 5 to 14 were operating the vehicle as partners. In the circumstances, the demand raised against the petitioner for those three years i.e. 1996 to 1999 is also not tenable. In the circumstances, besides cancelling the demand for advance contribution under the impugned order, there will be a further direction to the second respondent to recall the orders for those years (1996-1999) if on verification it is found that beneficiaries namely, employees for whom contribution demanded, is only for respondents 5 to 14. In view of the claim of respondents 5 to 14 that they were partners along with the petitioner, there will be a further direction to second respondent to cancel the registration if any granted to respondents 5 to 14 as Motor Workers for the period 1996-2000. However, if they later became Motor Workers, they are entitled to registration for the subsequent period. Revenue recovery

proceedings pending against the petitioner will stand cancelled.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms